



FH  
[REDACTED]

**STATE OF WISCONSIN  
Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MGE/147919

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**PRELIMINARY RECITALS**

Pursuant to a petition filed March 08, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Waukesha County Health and Human Services in regard to Medical Assistance (MA), a telephonic hearing was held on May 07, 2013, at Waukesha, Wisconsin.

The issue for determination is whether petitioner's community spouse income allocation can be increased.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Petitioner's Representative:

Attorney Joseph Redding  
6212 W. Greenfield Ave.  
West Allis, WI 53214

Respondent:

Department of Health Services  
1 West Wilson Street  
Madison, Wisconsin 53703

By: Karen Pearson

Waukesha County Health and Human Services  
500 Riverview Avenue  
Waukesha, WI 53188

**ADMINISTRATIVE LAW JUDGE:**

Kelly Cochrane  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Waukesha County.
2. Petitioner's gross monthly income includes \$6356.94 in monthly annuity payments and \$254 in Social Security benefits. Petitioner's community spouse receives \$607 in monthly Social Security benefits. Effective May 1, 2013 petitioner's annuity payment decreased to \$5746.67.

3. On February 27, 2013 the agency issued a notice to petitioner stating that effective November 1, 2012 he would have a nursing home liability in the amount of \$4058.27 through October 31, 2013.
4. Petitioner's community spouse's allowable monthly expenses total \$2720.97 per month.

### DISCUSSION

Spousal impoverishment is an MA policy, created pursuant to the Medicare Catastrophic Coverage Act of 1988, which allows persons to retain assets and income that are above the regular MA financial limits. Spousal impoverishment policy applies only to institutionalized persons and their community spouses.

After an institutionalized person is found eligible, he may allocate some of his income to the community spouse if the community spouse's gross monthly income does not exceed the Maximum Community Spouse Income Allocation of \$2521.57. See *MA Eligibility Handbook (MEH)*, §§18.1, 18.6 and 39.4.2. In this case, the income of the community spouse is \$607. The agency testified that it allocated \$1914.57 from the institutionalized spouse's net income to her as the community spouse. See also Exhibit 2.

The community spouse argues that she cannot get by on the Maximum Allocation. The county agency does not have discretion to allocate income to her that would cause her "income plus allocation" total to exceed \$2,521.57. However, I have some limited discretion and have determined that her income is short of what she needs to cover basic living expenses. The statute allows the allocation to be raised to avert financial duress, created by exceptional circumstances, for the community spouse. I conclude that the Maximum Allocation must be raised to \$2720.97 to avert financial duress. The acceptable monthly expenses identified by the community spouse are as follows:

Property taxes	334.93
Health Insurance	423.66
Water & sewer	50
Electricity	175
Insurance (house, umbrella, car)	92.12
Income tax	100
Medications (co-pays)	33
Telephone	125
Credit card	196.81 (Chase -to be paid off in one year)
Credit card	260.88 (JCP – to be paid off in one year)
Credit card	55.19 (Walmart – to be paid off in one year)
Credit card	174.38 (Kohls – to be paid off in one year)
Groceries	400
Home/yard maintenance	150
Gas for vehicle	100
Vehicle repair/maintenance	25
Personal care (hair, clothing, etc.)	25
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TOTAL	\$2720.97

In setting the Maximum Allocation at \$2720.97, I accepted as accurate the budget numbers provided by the community spouse in her exhibits.

A few expenses cannot be considered a basic living expense, and therefore were not included in the list of allowable expenses above. To determine whether an expense is basic, an ALJ looks at whether an expense is either mandatory (*e.g.*, income tax) or essential for survival (*e.g.*, food). Thus, the lawyer's

fees were disallowed, as the ALJs in this office have routinely not treated these costs as a basic living expense. The petitioner also has two telephones – a land line and a cell phone. The cell phone expense was deleted here, although it is obviously up to the petitioner as to which phone she wishes to keep in her budget. I also cannot include the petitioner's private room rate charges as these are considered the institutional spouse's own expenses. And, finally, while petitioner's son's testimony was that there were leaking pipes in the community spouse's home and the foundation was leaking, the only evidence I have of that is an estimate of work to inspect drain tiles in the amount of \$500. This does not relate to the testimony that the pipes would be fixed at \$250, or that the foundation work would cost \$20,000-25,000. Further, this is not evidence of the community spouse's current expenses. If the MA program is going to disregard petitioner's income for those expenses, I need more evidence than testimony about an estimate.

The agency is reminded to review these costs in an annual review to determine which if any debts (e.g., credit cards) have been paid off or reduced. It is also noted that the health insurance premium was prorated over a year using the variable rates provided by petitioner at hearing. As of the next review that monthly expense may need to be re-verified, but as of this date the ongoing monthly expense as of the next review would be \$290.

### **CONCLUSIONS OF LAW**

Petitioner's community spouse needs \$2720.97 in monthly income each month retroactive to November 1, 2012, to avoid financial duress.

**THEREFORE, it is**

### **ORDERED**

That the petition for review herein be remanded to the county agency with instructions to increase the Maximum Community Spouse Income Allocation to \$2720.97 effective with the November 1, 2012 cost of care liability determination, to change the monthly patient liability accordingly, and to issue a notice of decision regarding same. This action shall be taken within 10 days of the date of this Decision. In all other respects, the petition is dismissed.

### **REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

**APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

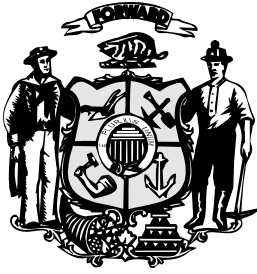
For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 18th day of June, 2013

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\sKelly Cochrane  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on June 18, 2013.

Waukesha County Health and Human Services  
Division of Health Care Access and Accountability  
[jredding@glojekltd.com](mailto:jredding@glojekltd.com)